IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 248 of 2003

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ASHOK @MARVADI REVATMAL AGRAVAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 248 of 2003

MR AR SHAIKH for Petitioner No. 1

MS HARSHA DEVANI, AGP for Respondent No. 1-3

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

Date of decision: 28/05/2003

ORAL JUDGEMENT

#. In this petition, by invocation of Article 226 of the Constitution of India, the petitioner-detenu has

questioned the legality and validity of the detention order recorded by the detaining authority, the Commissioner of Police, Ahmedabad City, Ahmedabad, dated 9.12.2002, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act"), on various grounds. One of the grounds on which the impugned order of detention is assailed is the delay in forwarding the representation of the detenu by the detaining authority to the confirming authority, the State of Gujarat.

#. It has been manifestly unfolded from the record of the petition that a representation dated 25.12.2002 at the instance of the detenu came to be received by the detaining authority on 27.12.2002, and it was forwarded to the State of Gujarat on 1.1.2003. It, therefore, becomes clear that there is a delay of four days in forwarding the representation of the detenu, which was required to be forwarded at the earliest opportunity in order that same can be effectively examined, appreciated and evaluated by the confirming authority. However, it is noticed from the affidavit-in-reply filed by the detaining authority that there were two intervening holidays, namely, on 28th and 29th December, 2002. Notwithstanding that, why delay has occurred in forwarding the said representation despite the fact that 30th and 31st December, 2002, were working days, about which there is no dispute, has not been explained satisfactorily. It, therefore, becomes explicit that there remains unexplained delay of two days in forwarding the representation to the confirming authority, the State of Gujarat, by the detaining authority, and, this delay materially affects the right of the detenu, consequently violating the concept of expeditious sending of representations without any further loss of time except unavoidable circumstances which could be explained. Therefore, on this ground alone, the questioned detention order is liable to be quashed and set aside, and that is the reason why the other grounds though urged, are not being probed in meticulous further details.

#. In the result, the questioned order of detention dated 9.12.2002 is quashed and set aside by allowing this petition. Consequently, the petitioner-detenu shall be set at liberty forthwith provided he is not required in any other case. Rule is made absolute. The parties are directed to bear their own costs.

(J.N.Bhatt, Acting C.J.)

(sunil)